REMARKS

Reconsideration of this application is respectfully requested in view of the foregoing

amendment and the following remarks.

Claim 1 was pending in this application. Applicants have amended claim 1 and added

new claims 2-19. Accordingly, after these amendments, claims 1-19 will be pending. For the

reasons stated below, Applicants respectfully submit that all claims pending in this application

are in condition for allowance.

In the Office Action mailed, claim 1 was rejected under 35 U.S.C. 103(a) as being

unpatentable over Gil (U.S. Patent 5,500,941) in view of D'Souza (U.S. Patent 6,453,468). To

the extent this rejection might still be applied to claims presently pending in this application, it is

respectfully traversed.

Claims 1, 8, and 17 are independent claims. Amended claim 1 of the present application

recites a method for verifying a software product's reliability. The method includes, among

other elements, instrumenting the software product, by a software certification laboratory, to

collect a plurality of usage data and a plurality of failure data when the software product is being

executed; providing the software product to a plurality of users; receiving, at the software

certification laboratory, the plurality of usage data and the plurality of failure data from each of

the plurality of users; analyzing the plurality of usage data and the plurality of failure data;

building an operational profile according to a result from the analyzing; and issuing a certificate

of reliability to the software product based on the result from the analyzing. The underscored

text above reflects the present amendment.

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art cited must teach or suggest all the claim limitations. See M.P.E.P §2143. Without conceding the first and second criteria, Applicant asserts that cited combination do not teach or suggest each and every elements of the claims.

Gil describes a method for performing software validation testing on large electronic systems that applies Usage Concepts specially modeled as Markov chains to "forrealize" the expected use of the system, to define the system behavior, and to introduce statistical measurement. According to Gil, usage profile, stimuli and responses are <u>pre-defined</u> before actually performing software validation testing on large electronic systems. The usage profile, stimuli, and responses are then automatically compiled into an automated test program, and associated test equipment is automatically programmed to generate a set of test cases. The set of test cases are then executed on the software system. The end of the set of test cases is determined, and the method analyzes and reports the software system quality.

Unlike the features as recited in amended claim 1 and newly added claims 2-19, the purpose of Gil is to generate a model to <u>pre-realize</u> the expected uses of a system, to define the system behavior, and to introduce statistical measurement. The model is then used to <u>generate</u> test cases, execute those test cases, and analyze the results. Indeed, Gil focuses on building an <u>estimated</u> functional specification of the electronic systems, rather than building an operational

profile for a software product based on <u>observed user behavior</u> (i.e., when the software product is

being executed).

As Gil describes a different concept from the present application, Gil fails to teach or

suggest at least the following elements of amended claim 1:

> instrumenting the software product, by the software certification laboratory, to
> collect a plurality of usage data and a plurality of failure data <u>when the
> software product is being executed</u>;
>
> providing the software product to a plurality of users; receiving, at the
> software certification laboratory, the plurality of usage data and the plurality
> of failure data from each of the plurality of users; analyzing the plurality of
> usage data and the plurality of failure data;
>
> <u>building an operational profile according to a result from the analyzing;</u> and
>
> issuing a certificate of reliability <u>to the software product based on the result
> from the analyzing</u>, as recited in amended claim 1.

D'Souza also fails to teach or suggest the features of amended claim 1. D'Souza

describes a method for enhancing reliability while upgrading a software program implemented in

a clustered computer system from a first version to a second version. In D'Souza, the method for

certification process is to incrementally increase the level of trust placed in a software module.

As described in the abstract, if a certification level of a given software module of a plurality of

software modules has a first certification level, the method includes limiting a load level on the

given software module a first load level. If a certification level of the given software module of

the plurality of software modules has a second certification level, the method then includes

allowing the load level on the second routing transaction requests to reach a second load level

higher than the first load level. That is, new software modules are gradually introduced and

certified as being able to replace the previous version of the software module.

That is, D'Souza does not issue a certification based on analyzing the plurality of usage data and the plurality of failure data that are collected when the software module is being executed, as similarly recited in the amended claim 1.

Accordingly, neither Gil nor D'Souza, whether taken singly or in combination thereof, teaches or suggests the features of the amended claim 1. As described above, the method of Gil does not intent to build an operational profile for a software product based on observed user behavior when the software product is being executed. D'Souza does not issue a certification based on the result of analyzing actual usage data and failure data from the plurality of users. Therefore, it would not have been obvious for one skilled in the art to modify the method of Gil with the certification process of D'Souza to achieve the method of amended claim 1. Applicants thus respectfully request that the Examiner reconsider and withdraw the rejection of claim 1. In view of the above, Applicants respectfully submit that amended claim 1 and newly added claims 2-19 should be in the condition for allowance.

In view of the foregoing all of the claims in this case are believed to be in condition for

allowance. Should the Examiner have any questions or determine that any further action is

desirable to place this application in even better condition for issue, the Examiner is encouraged

to telephone applicants' undersigned representative at the number listed below.

SHAW PITTMAN LLP
1650 Tysons Boulevard
McLean, VA 22102
Tel: 703-770-7577

Date: April 22, 2004

Respectfully submitted,

VOAS ET AL.

By: _____
Wan-Ching Y. Montfort
Patent Agent

CYM/dkp

Customer No. 28970

Document #: 1268525 v.1